



General Assembly

Substitute Bill No. 1198

January Session, 2001

***AN ACT CONCERNING COOPERATIVE HEALTH CARE
ARRANGEMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) As used in this section:

2 (1) "Cooperative arrangement" means an agreement among two or
3 more health care providers for the purpose of providing health care
4 services, including, but not limited to, negotiating fees, prices or rates,
5 sharing, allocating or referring patients, personnel, instructional
6 programs, support services or facilities or medical, diagnostic or
7 laboratory facilities or procedures, and includes a merger, acquisition
8 or joint venture of two or more health care providers, including
9 physician practice groups;

10 (2) "Health care provider" means a state licensed or certified person
11 or facility that delivers any health care service, including any person
12 licensed to practice pharmacy under the provisions of chapter 400j of
13 the general statutes;

14 (3) "Certificate of public advantage" means a certificate issued by the
15 Attorney General authorizing health care providers that are parties to
16 a cooperative arrangement to engage in conduct that could tend to
17 lessen competition in a relevant health care market, upon a showing
18 that such cooperative arrangement meets the criteria set forth in
19 subdivision (2) of subsection (c) of this section; and

20 (4) "Attorney General" means the Attorney General of the state of
21 Connecticut.

22 (b) Any two or more health care providers may apply to the
23 Attorney General for a certificate of public advantage to authorize a
24 cooperative arrangement. The application shall include (1) the name of
25 the applicant or applicants, (2) a description of the nature and scope of
26 the cooperative arrangement, (3) any consideration passing to any
27 party under the agreement, and (4) evidence in support of the criteria
28 set forth in subdivision (2) of subsection (c) of this section. Each
29 application shall be accompanied by a fee of one hundred dollars. Any
30 information of a proprietary nature submitted in such application that
31 meets the standards set forth in subdivision (5), (8) or (10) of
32 subsection (b) of section 1-210 of the general statutes shall be deemed
33 confidential and exempt from public disclosure.

34 (c) (1) The Attorney General shall review each application submitted
35 pursuant to subsection (b) of this section and, not later than ninety
36 days following receipt of such application, issue a written decision
37 approving or denying the application. The decision shall set forth the
38 Attorney General's findings with regard to the benefits and
39 disadvantages set forth in subdivision (2) of this subsection and a
40 conclusion as to whether the benefits outweigh the disadvantages to
41 the people of this state. The Attorney General may conduct a hearing
42 to obtain information necessary in making such decision.

43 (2) In reviewing applications under this section, the Attorney
44 General may consider the criteria established in subsection (a) of
45 section 19a-637 of the general statutes that the Attorney General deems
46 relevant to the application for a certificate of public advantage and any
47 benefits of such cooperative arrangement in furthering the goals of
48 health care reform including, but not limited to: (A) Enhancement of
49 the quality of health services to consumers; (B) gains in cost efficiency
50 of health services; (C) improvement in utilization of and access to
51 health services and equipment; and (D) avoidance of duplication of
52 health care resources. The Attorney General shall not approve an

53 application for a certificate of public advantage unless the Attorney
54 General finds that the benefits of the proposed cooperative
55 arrangement outweigh the disadvantages including, but not limited to:
56 (i) The potential reduction of competition; (ii) the adverse impact on
57 quality, access or price of health care services to consumers; and (iii)
58 the availability of arrangements to achieve the same benefits that are
59 less restrictive of competition.

60 (3) Cooperative arrangements authorized by the Attorney General
61 in a certificate of public advantage issued pursuant to this section shall
62 be deemed to be conduct taken pursuant to the provisions of the
63 general statutes and in furtherance of the public purposes of this state
64 and are not subject to the provisions of chapter 624 of the general
65 statutes, except that the Attorney General may utilize the powers set
66 forth in section 35-42 of the general statutes. This section shall not be
67 construed to require any health care provider to obtain a certificate of
68 public advantage in order to enter into a cooperative arrangement, and
69 absent approval of such cooperative arrangement by the Attorney
70 General, the legality of such cooperative arrangement shall be
71 determined by applicable antitrust law.

72 (4) Health care providers in a cooperative arrangement authorized
73 pursuant to this section shall submit an annual progress report to the
74 Attorney General on a form prescribed by the Attorney General. The
75 report shall be accompanied by a fee of one hundred dollars.

76 (5) The Attorney General shall actively supervise the cooperative
77 arrangements authorized pursuant to this section to determine
78 whether the conduct should continue to be authorized. The Attorney
79 General shall review the conduct through annual progress reports
80 submitted by the health care providers in a cooperative arrangement in
81 accordance with subdivision (4) of this subsection to evaluate whether
82 the conduct is consistent with the application and whether the benefits
83 continue to outweigh the disadvantages. If the Attorney General has
84 reason to believe that the likely benefits no longer outweigh the
85 disadvantages, the Attorney General shall notify the holder of the

86 certificate and hold a hearing to determine whether such certificate
87 should be modified or revoked. Such modification or revocation shall
88 take effect ninety days from the receipt of notice of a final decision by
89 the Attorney General. The Attorney General shall not modify or revoke
90 a certificate of public advantage more than three years after the initial
91 issuance of such certificate.

92 (d) Any person denied a certificate of public advantage by the
93 Attorney General pursuant to this section and any holder of a
94 certificate of public advantage that has been modified or revoked by
95 the Attorney General pursuant to subdivision (5) of subsection (c) of
96 this section may appeal therefrom as if such denial, modification or
97 revocation were a contested case within the meaning of chapter 54 of
98 the general statutes.

99 (e) No managed care organization, as defined in subdivision (2) of
100 section 38a-478 of the general statutes, shall refuse to negotiate in good
101 faith with parties to a cooperative arrangement authorized by the
102 Attorney General. Any managed care organization that violates this
103 section shall be subject to a civil penalty of not more than twenty-five
104 thousand dollars per day, for each violation. The Attorney General
105 may institute proceedings to enforce the provisions of this section in
106 the superior court for the judicial district of Hartford.

107 (f) A violation of subsection (e) of this section shall constitute a
108 violation of chapter 735a of the general statutes.

Statement of Legislative Commissioners:

In subdivision (1) of subsection (a), the phrase "allocation or referral of patients" was changed to "allocating or referring patients" for grammatical consistency. In subdivision (2) of subsection (c), the phrase "In authorizing a cooperative arrangement" was changed to "In reviewing applications" for clarity and consistency; and the last sentence was rewritten for clarity. Subdivision (4) of subsection (c) was rewritten to clarify that the annual progress report should be on a form prescribed by the Attorney General.

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